The chief clerk makes the following entries under the above date.

COMMITTEE REPORTS

1973 REPORT OF THE JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

(for the biennium ending April 30, 1973)
by Senator Wayne F. Whittow

To: The Honorable, Governor Patrick J. Lucey
The Honorable, Senate and Assembly of Wisconsin

At a meeting held August 25, 1971, the Committee elected Senator Whittow as Chairman, Representative Johnson as Vice Chairman and Senator Heinzen as Secretary.

At a meeting held September 13, 1971, the Committee held a hearing concerning rule Ch. NR 151, concerning solid waste management and the regulation of dump sites. After hearing numerous complainants and statements by Department of Natural Resources personnel, the department asked for 60 days time in which to attempt to reconcile the rules with the complaints. On November 10, 1971, the department reported to the Committee that it was modifying previous interpretations of the rule to relieve the problems. There have been no further requests for hearing in regard to this matter.

At a meeting held December 22, 1971, the Committee held a hearing concerning rule Tax 8.41, which had been amended effective January 1, 1972, to allow the sale of half gallon liquor containers in Wisconsin. By a vote of 6 to 2 the Committee voted to suspend the amendment of the rule. (Senate Bill 874, to limit intoxicating liquor containers to one quart introduced and passed; see Ch. 331, laws of 1971.)

At a meeting held May 4, 1972 the Committee held a hearing concerning rule Ind 88.20 relating to pregnancy and maternity leave. After lengthy hearing the Committee voted to take no action for 4 months while the Department of Industry, Labor, and Human Relations attempted to reach an agreement with complaining parties. (Subsequently DILHR repealed its rule, leaving the subject to be covered by any applicalbe Federal rule.)

On September 26, 1972 the Committee scheduled a hearing concerning rule Ag Ch 124 on Comparative Price Advertising and on rule Ins. 3.25 as to calculating credit insurance premiums.

The hearing as to rule Ins. 3.25 was not held because the Commissioner of Insurance informed the Committee that he had reached an agreement with complainants as to how the matter should be handled.

After hearing concerning rule Ch. Ag124, the Committee voted to direct the Department of Agriculture to hold further consultations with interested parties and in the meantime the hearing would be recessed for 30 days. (Thereafter the department advised the Committee that the rule in question would be repealed and that further public hearings would be held looking toward the adoption of a new rule, hopefully more acceptable to the retail sellers industry.)

The Committee also received complaints concerning a rule regulating Home Solicitation Selling (Rule Ag Ch. 127). This matter was handled without hearing when the Department agreed to consider modifying the rule.

At a meeting held February 21, 1973, the Committee held a hearing concerning a complaint by Milwaukee county as to the "manual" requirement by H & S S that the maximum housing allowance for all types of welfare recipients be set at $130 per month. The requirement is not in the H & S S administrative rules. It was agreed that the Committee would take no action if Mr. Wilbur Schmidt and County Supervisor Nagel would meet and try to resolve the problems within 30 days.

Also at the February 21 meeting the Committee heard a complaint by Mrs. Robert Anderegg, Fond du Lac County Supervisor, that H & S S has required the county to hire a "Volunteer Services Coordinator" at a cost of $10,000 under threat of losing state aid. Mr. Schmidt said that the county could meet the requirement by assigning a present staff person or by contracting. There was a discussion of suspending the department's order but no action was taken if H & S S would attempt to make the language conform to federal requirements.

At the the February 21 meeting the Committee also heard a complaint as to rule Ind. 8.72 (3) (a) which requires that self-service gas stations have an attendant who does nothing but supervise the pumps. No action was taken because it was reported that 2 companies were now contesting the rule in court.

Also at the February 21 meeting the Committee heard a complaint concerning rule Ind Ch. 4 as it applies to an elevator in a funeral home used only to move empty caskets from the basement

to the ground floor. Complainant alleged that the rules were excessive. No action was taken but it was agreed that Senator La Fave and Representative Gower would meet a DILHR inspector at the home to consider whether the department should issue an excpetion order to apply in this case.

On February 22 the Committee heard a complaint as to rule MVD 24 - Motor Vehicle Trade Practices. It was announced that the department had just adopted a revised version of MVD 24, to be effective April 1, 1973. The objectors stated that the rule required excessive paperwork; that rule MVD 24.03 (5) requires disclosure of facts which the dealer cannot know in many cases; and that MVD 24.06, in requiring written estimates of repairs, is discriminatory because it only applies to licensed dealers who constitute only 30% of the shops doing repair work. The Committee voted to suspend MVD 24.03 (5) and 24.06 by a vote of 6 to 0. (See this report as to the meeting of April 5, 1973).

At a meeting held March 8, 1973, the Committee heard complaints regarding rule NR 116 concerning flood plain zoning. Proponents of the rule stated that the rule was needed to prevent further construction in flood plains; that is there is no rule people won't be able to get flood plain insurance or obtain VA or other federal loans. Opponents stated that the department had used excessive predictions of possible floods and were unduly restricting areas not subject to flooding. No action was taken but the department was ordered to reconsider the matter and report back to the Committee by May 1, 1973.

Also on March 8 the Committee heard a complaint concerning rule H 62.14 (1) (d) which allows only positive displacement pumps for introducing chemicals into the potable water supply. Complaimant said that a venturi-type feeder pump was safer in many installations. The department said that they had offered to consider the pump if the manufacturer would submit it to a testing laboratory for tests as to its safety and reliability, but that the laboratory had to be one that the department could rely on. No No action was taken but the department and complainant were expected to agree on a test of the pump.

Also on March 8 the Committee heard a complaint to the effect that safety glasses furnished pursuant to rule Ind 1.81 actually damage the wearer's eyes. The department said that the rule is the same as federal safety glasses rules. The department was told to review the matter and if necessary upgrade the rule. It is to report back to the Committee by May 8, 1973.

On March 19, 1973, the Committee further considered rule MVD 24, Automotive Trade Practices. After a lengthy hearing a

motion was made to direct the deaprtment to suspend rule MVD 24.03 (5) and 24.06 for 90 days. The motion was held in abeyance pending an executive session of the Committee.

At an executive session held on April 5, 1973, the Committee took further action as to rule MVD 24. Because of an error in the notice of the meeting of February 22 concerning this rule, it appeared that the Committee action on that date was of questionable validity. As to rule MVD 24.03 (5), it was agreed that nothing be done at this time because the rule does not go into effect until July 1. The Committee expressed the hope that the interested parties could agree on some changes prior to that date. As to rule MVD 24.06, the Committee suspended the rule by a vote of 7 to 0. The basis for the action was that the rule is discriminatory because it applies only to licensed dealers, not all repair shops. It was also stated that a bill to cover the substance of the rule with broader application would be introduced. (See Senate Bill 456 and Assembly Bill 848.)

Also at the April 5 meeting the earlier matter of the Fond du Lac county complaint was taken up. The department of H & S S was directed to consider amending their order by deleting the requirement of a full-time voluntary services coordinator and that the order go no further than the federal regulation requires. It was also suggested that H & S S consider raising the number of service employes which triggers the requirement for the position to a number higher than 20.

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

January 21, 1974

To the Honorable, the Senate:

I am returning Senate Bill 338 which has become law without my approval.

The issues raised by Senate Bill 338 include some of the most deeply-felt and strongly argued moral and political questions of our time. Involved are religious and ethical concerns about the sanctity of human life, and the inviolability of individual conscience; the rights of women and the free access of all to medical care; the right of government to intervene in private choices on behalf of

significant public ends, and the right of citizens to be protected from government interference in their private choices.

In confronting such questions, a governor cannot insulate himself from his own conscience, background and beliefs -- nor should he. But at the same time, he cannot ignore his responsibilities as an elected representative of all of the people, sworn to uphold the United State Constitution. I personally believe abortion to be morally wrong. As Governor of Wisconsin, however, I recognize that many citizens of this State do not share this viewpoint, and that the Supreme Court has confirmed the constitutionality of their position.

Had Senate Bill 338 confined itself to insuring the freedom of conscience of all medical personnel, I would have had no difficulty in unequivocally endorsing it. Government cannot and should not have the right to force individuals to take actions contrary to their moral and religious beliefs, upon penalty of loss of livelihood. I would hope that this is a principle upon which both the opponents and supporters of Senate Bill 338 could agree.

However, this bill does not protect freedom of conscience for everyone. Thus, the bill affords no protection from job discrimination for those physicians, nurses and others who are willing to perform abortions or sterilizations. And it sanctions the adoption of anti-abortion or anti-sterilization policies by all hospitals, including public facilities.

I have grave doubt that the institutional freedom of conscience Senate Bill 338 seeks to confirm and protect will be recognized by the courts. I believe the courts will not permit public hospitals to deny persons wishing to have or to perform abortions or sterilizations access to do so regardless of the provisions of this bill. Furthermore, Senate Bill 338 may so color any anti-abortion or anti-sterilization policy adopted by a private or denominational hospital that any action to enforce such policy will be characterized by the courts as State action, thus rendering enforcement of the policy unconstitutional. Ironically then, Senate Bill 338 may contain the seeds of its own destruction at lease insofar as it purports to recognize and protect institutional freedom of conscience.

In addition to the legal and constitutional questions raised by this bill are the questions it raises concerning the delivery of health care services. The bill allows hospitals to limit their facilities to prohibit abortions and sterilizations even though both procedures are legal. While access to facilities for legal abortions may be limited to some degree by this bill, that limitation probably will not unreasonably inhibit proper health care in most cases. However, to

the extent that this bill further inhibits access by women to proper facilities for the performance of sterilization procedures, it is discriminatory and detrimental to our health care system.

The legal and health care policy questions raised by this bill caused me to seriously consider its veto. I decided against this course of action only after becoming convinced that a veto would not eliminate exisiting hospital restrictions against abortion or sterilization nor prevent the adoption of such prohibitions by additional health care institutions. The bill merely permits, but does not require such prohibitions. Thus, the validity of such prohibitions -- whether or not adopted under the provisions of Senate Bill 338 -- becomes a question for the courts. But because of the serious reservations I have about the legality and wisdom of certain parts of this bill, I have withheld my formal approval of the measure.

Respectfully submitted,
PATRICK J. LUCEY
Governor

AMENDMENTS OFFERED

Senate amendment 1 to **Senate Bill 186** by Senator Roseleip.

Senate amendment 5 to **Senate Bill 451** by Senator Hollander.

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 338

Deposited in the office of the Secretary of State pursuant to Article V, Section 10 of the Constitution, on Monday, January 21, 1974. Chapter no. 159.